

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SANDY J. BATTISTA,)
 Plaintiff,)
) Civil Action No. 04-10226-
MEL)
 v.)
))
ROBERT MURPHY, et al.,)
 Defendants.)

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's Motion to Waive Service Filing Fees is denied without prejudice and plaintiff is advised that this action shall be dismissed without prejudice, thirty-five days from the date of this Memorandum and Order, unless before that time, plaintiff either pays the \$150 filing fee or files an application to proceed without prepayment of the filing fee on the form provided by the Clerk.

On January 30, 2004, Sandy J. Battista, a civilly committed patient¹ at the Massachusetts Treatment Center, submitted for filing her civil rights complaint accompanied by her self-prepared motion to waive filing fees.

A party filing a civil complaint in this Court must

¹Plaintiff was formerly known as David E. Megarry, Jr. Because plaintiff refers to himself with female pronouns, the attached order states "[t]he Court recognizes that the pleadings refer to plaintiff with female pronouns and will refer to plaintiff using female pronouns.

either (1) pay the \$150.00 filing fee or (2) file an Application to Proceed Without Prepayment of Filing Fees and Affidavit. See 28 U.S.C. 1914(a) (\$150.00 filing fee); 28 U.S.C. 1915 (proceedings in forma pauperis). Plaintiff, as a civilly committed patient, is not subject to the fee-paying requirements of the Prison Litigation Reform Act. Civilly-committed residents at treatment center are not "prisoners" within the meaning of 28 U.S.C. § 1915(h). See King v. Greenblatt, 53 F. Supp.2d 117, 138 (D. Mass. 1999). However, pursuant to Section 1915(a)(1), all persons who wish to proceed in forma pauperis, regardless of whether or not they are considered a "prisoner," must submit an affidavit that includes a statement of all their assets and that he or she is unable to pay the filing fee. See 28 U.S.C. 1915(1)(1).

For the convenience of litigants, this Court provides a standardized form for applications for waiver of the filing fee entitled "Application to Proceed Without Prepayment of Fees and Affidavit." Although this Court does not require by local rule that litigants use this form for their applications, the use of the form is suggested because it assists parties by soliciting the necessary information. Because plaintiff has not paid the filing fee or filed a request to waive the filing fee on the form provided by the

Court, she will be granted additional time to do so.

Accordingly, it is hereby

ORDERED, plaintiff's motion to waive filing fees and to be allowed to proceed in forma pauperis (Docket No. 1) is denied without prejudice. Plaintiff is advised that this action shall be dismissed without prejudice, thirty-five days from the date of this Memorandum and Order, unless before that time, plaintiff either pays the \$150 filing fee or files an application to proceed without prepayment of the filing fee on the form provided by the Clerk. The Clerk is directed to send plaintiff a copy of the Application to Proceed Without Prepayment of Fees and Affidavit with this Order.

SO ORDERED.

Dated at Boston, Massachusetts, this 25th day of February, 2004.

/s/ Morris E. Lasker
Morris E. Lasker
UNITED STATES SENIOR DISTRICT

JUDGE